

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 865-X

HONEY CREEK RAILROAD, INC.-ABANDONMENT
IN HENRY COUNTY, IN

and

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**SECOND DECLARATION OF
KATHLEEN CLUBB KAUFFMAN**

ENTERED
Office of Proceedings

JUL 23 2007

Part of
Public Record

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and Roberts Construction, Inc.*

Dated: July 23, 2007

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SURFACE TRANSPORTATION BOARD

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SECOND DECLARATION OF KATHLEEN CLUBB KAUFFMAN

My name is Kathleen Clubb Kauffman. I am over the age of 21, and I am competent to make this declaration. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

- A. I am an attorney with the law firm of Ackerson Kauffman Fex, P.C. at 1250 H Street, N.W., Suite 850, Washington, D.C. 20005, counsel for Gary L. Roberts, Roberts Pipeline Construction Company, Inc. and Roberts Construction, Inc. (“Roberts”) in this action. I make this declaration in support of the [official name of sur-reply]
- B. I am an active member in good standing of the Bar of the District of Columbia, and have been a member in good standing at all times since my admission to the Bar in November 1980
- C. Attached hereto, in exhibits corresponding to the sequential number tabs, are true and accurate copies of the following documents:

1. Anthony J. Will, RailInc., *Official Railroad Station List, OPSL 6000-Y 156 and 159* (Issued March 1, 2004)
2. Anthony J. Will, RailInc., *Official Railroad Station List, OPSL 6000-Y 1-2* (Issued March 1, 2004)
3. Anthony J. Will, RailInc., *Official Railroad Station List, OPSL 6000-Y 3* (Issued March 1, 2004).
4. Letter from Counsel for Wheeling & Lake Erie Railroad to Surface Transportation Board, Re: Docket AB 227 (Sub-No 8X), Wheeling & Lake Erie Railway Company—Abandonment Exemption—In Huron County, Ohio, December 20, 1996.
5. *Seminole Gulf Railway, L P —Exemption to Acquire and Operate—CSX Transportation, Inc*, FD No. 31155, 52 FR 45509 (Serv. November 30, 1987).
6. Chronological Case Summary (CCS), *Morristown Grain v Farmland In*, Case No. 33C01-0111-CP-358, Henry County Circuit Court.
7. Farmland Insurance Company's Brief in Support of Motion for Partial Summary Judgment, filed June 16, 2006, *Morristown Grain v Farmland In*, Case No. 33C01-0111-CP-358, Henry County Circuit Court.
8. Order on Partial Summary Judgment, entered August 16, 2006, *Morristown Grain v Farmland In*, Case No. 33C01-0111-CP-358, Henry County Circuit Court.

9. Letter from William B Keaton to John H. Brooke, December 13, 2005.
10. "Board turns deaf ear to opponents," New Castle (IN) Courier Times, Thursday, May 10, 2007.

Dated this 23rd day of June, 2007

I, Kathleen Clubb Kauffman, declare under penalty of perjury that the foregoing is true and accurate. Further, I certify that I am qualified and authorized to file this declaration.


Kathleen Clubb Kauffman

EXHIBIT 1

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 15, 2004

EFFECTIVE
MARCH 15, 2004

OPSL 6000-Y
(Cancels OPSL 6000-X)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Official revenue-capable interchange data from Industry Junction File
- ◆ Junction Rule 260 and Interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

Anthony J. Will
Issuing Officer

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STATION	COUNTY	RULE 280	RR	OP&L	FBAC	SPLC	NATIONAL RATE BASIS	SWITCH LIMIT CITY	RATE 220
Roby IN (41)	[Lake]	ROBY	NS	86955	70657	363501	Chicago, IL	Chicago, IL	46320
Roby IN (3241)	[Lake]	ROBY	UP	20222	20222	363501	Chicago IL	Chicago, IL	46320
Rochester IN (3156-3700)	[Fulton]		CIND	82437	82437	362930			46875
Rochester IN (1-295-3100-3700)	[Fulton]		FC	1	1	362930			46875
Rochester IN (3700)	[Fulton]	RCHES	NS	72615	85265	362930	Hibbard IN		46875
Rochester IN (274-600-3114)	[Fulton]		TPW	1510	20437	362930	Hibbard, IN		46875
Rock Island IN (1-22-41-3000-3489)	[Marion]		CSXT	48100	19040	368815	Indianapolis IN	Indianapolis, IN	46208
Rockfield IN	[Carroll]		NS	15000	23209	366633	Logansport, IN		46877
Rockport IN (1-22 3000-3489)	[Spencer]	RCKP	CSXT	21008 38	40916	376880	Cannelton IN		46750
Rockport IN	[Spencer]	RCKP	NS	47750	50420	376880	Cannelton IN		46750
Rolling Prairie IN (41)	[La Porte]		NS	66915	70650	363118	South Bend IN		46371
Romney IN (1-3000-3489)	[Tippecanoe]		CSXT	24180	40845	369198	Lafayette IN		47900
Rose Lawn, IN (1-3000-3489)	[Newton]		CSXT	24074	40808	363914	Malden IN		46372
Roseburg, IN (1-3100-3700)	[Grant]		CERA	10481	10481	365748			46982
Roseburg, IN (3156-3700)	[Grant]		CIND	61481	61481	365748			46982
Roseburg IN (3700)	[Grant]		NS	71140	85162	365748	Logansport IN		47350
Roseburg, IN (274-600-3114)	[Grant]		TPW	1480	10481	365748	Marion IN		46863
Royal Center, IN (1-416-3100-3700)	[Cass]		ARE	80073	80073	368227			46876
Royal Center IN (3156-3700)	[Cass]		CIND	72073	72073	368227			46876
Royal Center, IN (3700)	[Cass]		NS	70037	65855	368227	Logansport IN		46876
Royal Center, IN (328-600-3114)	[Cass]		TPW	1575	80073	368277	Logansport, IN		46876
Royerton IN	[Delaware]		NS	11525	15080	367335	Muncie IN		47302
Rushville, IN (1-3000-3489)	[Rush]		CSXT	45360	75118	371560	Mauzy IN		46173
Russellville IN (1 3100 3700)	[Howard]		CERA	10108	10188	365998			46876
Russellville, IN (3156-3700)	[Howard]		CIND	61166	61166	365998			46876
Russellville IN (3700)	[Howard]		NS	11945	14161	365998	Tipton IN		46876
Russellville, IN (274-600-3114)	[Howard]		TPW	1415	10168	365998	Tipton IN		46876
Rutland IN	[Marshall]		NS	10580	10437	362892	Hibbard IN		46383
Salem IN (1-3000-3489)	[Washington]		CSXT	24325	40890	375750	Mitchell IN		47180
Sandborn IN (1-3126-3495-3700)	[Knox]		ISRR	8890	8890	378912	Washington IN		47670
Sandborn IN (3700)	[Knox]		NS	73086	65673	378912	Washington IN		47670
Santa Claus IN (1-413-640-3100-3700)	[Spencer]		HOS	105	105	378944	Cannelton IN		47570
Santa Claus IN (3700)	[Spencer]		NS	72290	80512	378644	Cannelton IN		47570
Schererville IN (41)	[Lake]		NS	87490	70656	363545	Malden IN	Chicago IL	46376
Schneider, IN	[Lake]		CPRS	8194 75	282	363596			46376
Schneider, IN (41)	[Lake]		NS	87385	70685	363596	Kankakee IL		46376
Scobleville IN	[Clinton]		NS	10980	11223	368252	Tipton IN		46811
Scottsburg IN (1-3495)	[Scott]		LIRC	8564	8564	374450	Columbus IN		47170
Seaford IN (1-600-3114)	[White]		TPW	31	31	368455	Monon IN		47080
Sellersburg IN (1-3495)	[Clark]		LIRC	8576	8576	375673	Speed IN		47170
Sellersburg, IN (1 3100)	[Clark]		SIND	105	105	375673			47170
Selma, IN (1-22-41-3000-3489)	[Delaware]		CSXT	48050	18975	367344	Muncie IN		47380
Seymour, IN (1-3000-3489)	[Jackson]	SEYMR	CSXT	43690	71889	375111	Columbus IN		47280
Seymour, IN (1-3495)	[Jackson]	SEYMR	LIRC	8556	8556	375111	Columbus, IN		47280
Shadeland IN (1-22-3000-3489)	[Tippecanoe]		CSXT	24147	40819	368172	Lafayette, IN		47380
Shadeland IN	[Tippecanoe]		NS	15025	21238	368172	Lafayette IN		47380
Sharpeville IN (1-3100-3700)	[Tipton]		CERA	30075	30075	368122			46880
Sharpeville IN (3156-3700)	[Tipton]		CIND	63075	63075	368122			46880
Sharpeville IN	[Tipton]		NS	11285	14164	368122	Tipton IN		46880
Sharpeville IN (274-600-3114)	[Tipton]		TPW	1520	30075	368122	Tipton IN		46880
Sheff, IN (1-3100)	[Benton]		KBSR	538	538	368816			47680
Shelburn IN (1-3000-3489)	[Sullivan]	SHLBN	CSXT	21008 80	40926	373818	Sullivan IN		46970
Shelby IN (1-3000-3489)	[Lake]		CSXT	24085	40807	363594	Malden IN		46376
Shelby IN (41)	[Lake]	SHLBY	NS	87840	70687	363594	Malden, IN		46376
Shelbyville IN (1-3100-3700)	[Shelby]	SBYV	CIND	50826	50826	372150	Shelbyville IN		46376
Shelbyville IN (1-22-41-3000-3489)	[Shelby]	SBYV	CSXT	43180	19120	372150	Shelbyville IN		46376
Shidlers, IN	[Delaware]		NS	11520	15057	367332	Muncie IN		47380
Shops IN (1-3000-3489)	[Davess]		CSXT	43575	71906	376561	Washington, IN		47380
Sidney IN	[Kosciusko]		NS	10545	10403	362882	Silver Lake, IN		46880
Silver Lake IN (41)	[Kosciusko]		NS	87170	70664	362888	Silver Lake IN		46880
Sims, IN (1-3100-3700)	[Grant]		CERA	10411	10411	365769			46880
Sims, IN (3156-3700)	[Grant]		CIND	61411	61411	365769			46880
Sims, IN (3700)	[Grant]		NS	71155	85159	365769	Logansport IN		46880
Sims, IN (274-600-3114)	[Grant]		TPW	1445	10411	365769	Marion IN		46880
Smythe IN	[Vanderburgh]		NS	47810	50449	379482	Lippe, IN		47380
Somerville IN (1 22)	[Gibson]		ISRR	15363	15363	379172			47380
Somerville, IN	[Gibson]		NS	73065	85677	379172	Oakland City, IN		47380
South Bend Cr IN (41)	[St Joseph]	SBEND	NS	86902	70702	362300	South Bend IN		46880
South Bend, IN (3188)	[St Joseph]		AMTK	48095	48095	362300			46880
South Bend IN	[St Joseph]	SBEND	BNSF	85054 55	73875	362300	South Bend IN		46880
South Bend, IN (1-3326)	[St Joseph]	SBEND	CN	55903	55903	362300	South Bend IN		46880
South Bend IN (1-3100)	[St Joseph]	SBEND	CSS	111	111	362300	South Bend IN		46880
South Bend IN	[St Joseph]	SBEND	NS	19405	31001	362300	South Bend IN		46880
South Gary IN	[Lake]		NS	10650	10491	363528	Chicago IL		46376

ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 289	RR	OPSL	FSAC	SPLC	NATIONAL RATE BASIS	SWITCH LIMIT CITY	RATE ZIP
South Milford, IN (1-3100-3700)	[Lagrange]		IN	65302	65302	361277	South Milford IN		46786
South Milford, IN (3700)	[Lagrange]		NS	72353	65302	361277	South Milford IN		46786
South Point, IN (1-3000-3489)	[Tippecanoe]		CSX	24155	40844	369178	Lafayette IN		47905
South Warsaw, IN	[La Porte]	SWANA	NS	10625	10467	363186	Malden IN		46390
South Whitley, IN	[Whitley]	SWTLV	NS	10540	10396	361992	Storv Lake IN		46787
Speedport, IN (1-22-41-3000-3489)	[Marion]	STHPR	CSX	48105	19060	368888	Indianapolis IN		46217
Speedport, IN (1-3495)	[Marion]	STHPR	IR	8419	8469	368988	Indianapolis IN		46217
Speedport, IN (1-3000-3489)	[Jackson]		CSX	41665	11876	375146	Michels IN		47280
Speed, IN (1-3495)	[Clark]		LIRC	8675	8575	375656	Speed IN		47172
Speed, IN (1-3100)	[Clark]		SIND	100	100	375656			47172
Speedway, IN (1-22-41-3000-3489)	[Marion]		CSX	48090	19052	368851	Indianapolis IN	Indianapolis IN	46224
Speedway, IN (41)	[Webster]		NS	67185	70687	365358	Silver Lake IN		46992
Speedway, IN (1-3126-3495-3700)	[Owen]		ISRR	8664	8664	373160	Bloomington IN		47460
Speedway, IN (3700)	[Owen]	SPNIN	NS	73088	65671	373160	Bloomington IN		47460
Speedway, IN	[De Kalb]		NS	14790	23522	361488	Fi Wayne IN		46788
Spencer Creek Siding, IN	[Warren]		NS	47816	50444	378834	Oakland City IN		47819
St Anthony, IN	[Dubois]		NS	47235	50346	378275	Hurlingburg IN		47575
St Joe, IN (1-22-3000-3489)	[De Kalb]		CSX	42205	71079	361482	Fi Wayne IN		46785
St Joe, IN (1-3000-3489)	[Lake]		CSX	24050	43864	363546	Karlakus IL		46373
St Joe, IN (41)	[Lake]		NS	67170	70682	363546	Karlakus IL		46373
St Paul, IN (1-3100-3700)	[Decatur]		CIND	50127	50727	371927			47272
St Paul, IN (1-22-3000-3489)	[Posey]		CSX	21010	40327	379951	Lippe IN		47620
Standard Pk, IN (1-3000-3498)	[Sullivan]		CSX	2100124	40837	373513	Terra Haute IN		47654
Star City, IN (1-416-3100-3700)	[Pulaski]		ARE	80155	80155	363772			46985
Star City, IN (3156-3700)	[Pulaski]		CIND	72155	72155	363772			46985
Star City, IN (3700)	[Pulaski]		NS	70039	65856	363772	Hibbard IN		46985
Star City, IN (328-600-3114)	[Pulaski]		TPW	1580	80155	363772	Hibbard IN		46985
State Line, IN	[Warren]		NS	15100	23273	369282	Marshallfield IN		47982
Steubenville, IN (1-3100-3700)	[Steuben]		IN	80917	80917	361186	South Milford IN		46705
Steubenville, IN (3700)	[Steuben]	STEIN	NS	72264	80917	361186	South Milford IN		46705
Stewart, IN	[Warren]		NS	47807	50447	378878	Lippe IN		47910
Stewart, IN (1-3100)	[Warren]		KBSR	548	548	369283	Danville IL		47973
Stewart, IN (1-3228)	[La Porte]	STLWL	CV	55979	55989	363143	South Bend IN		46750
Stewart, IN (1-3122)	[La Porte]	STLWI	CS	84	84	363143	South Bend IN		46751
Stewart, IN (1-22-3100)	[Lake]		EJF	355	75	363513	Chicago, IL		60607
Stewart Park, IN	[Vanderburgh]		NS	47812	50451	378510	Lippe IN		47708
Stewart, IN (1-3000-3489)	[Sullivan]	SULLV	CSX	2100676	40824	373950	Sullivan IN		47882
Stewart, IN (26)	[Sullivan]	SULLV	INRD	11090	11090	373950			47882
Stewart Springs, IN (1-3100)	[Henry]		HCRP	300	3	367638	Monroe IN		47388
Stewart, IN (1-3100)	[Tippecanoe]		KBSR	574	574	369139			47982
Stewartville, IN (41)	[Madison]		NS	67245	70673	367812	Marion IN		46970
Stewart, IN (1-3100-3700)	[Ripley]		CIND	50399	50399	374318			47041
Stewartville, IN (1-3100)	[Benton]		KBSR	552	552	368844			47944
Stewartville, IN (1-3100-3700)	[Grant]		CERA	10429	10429	365768			46986
Stewartville, IN (3156-3700)	[Grant]		CIND	61429	61429	365768			46986
Stewartville, IN (3700)	[Grant]		NS	71156	65166	365768	Logansport IN		46986
Stewartville, IN (274-600-3114)	[Grant]		TPW	1530	40065	365725	Marion IN		46952
Stewartville, IN (1-3100)	[Greene]	SWCTY	CPRS	822250	210	373768	Sullivan IN		47465
Stewartville, IN (1-3100)	[Greene]	SWCTY	INRD	10890	10890	373768	Sullivan IN		47465
Stewartville, IN (1-3126-3495-3700)	[Greene]	SWCTY	ISRR	8674	8674	373768	Sullivan IN		47465
Stewartville, IN (3700)	[Greene]	SWCTY	NS	73090	85672	373768	Sullivan IN		47465
Stewartville, IN (1-3100-3700)	[Howard]		CFRA	10377	10377	365932			46936
Stewartville, IN (3156-3700)	[Howard]		LINC	81377	81377	365932			46936
Stewartville, IN (3700)	[Howard]		NS	71156	65158	365932	Logansport IN		47901
Stewartville, IN (274-600-3114)	[Howard]		TPW	1443	10377	365932	Marion IN		46936
Stewartville, IN (1-3000-3489)	[Kosciusko]		CSX	42186	71090	372615	Milwaukee IN		47567
Stewartville, IN (1-3100)	[Warren]		KBSR	545	545	369235	Danville IL		47917
Stewartville, IN (1-3100)	[Benton]		KBSR	559	559	366692			47984
Stewartville, IN (1-3495)	[Bartholomew]		LIRC	8483	6483	372637	Columbus IN		47280
Stewartville, IN (1-413-640-3100-3700)	[Perry]		HO	125	125	377886	Connersville IN		47586
Stewartville, IN (3700)	[Perry]		NS	72294	61853	377886	Connersville IN		47586
Stewartville, IN (1-3100)	[Crawford]		NS	47195	50365	377818	Marion IN		47140
Stewartville, IN (1-3100)	[Benton]		KBSR	558	558	366885			47946
Stewartville, IN (1-3100)	[St Joseph]		SS	105	105	362435	South Bend IN		46752
Stewartville, IN (41)	[St Joseph]	TRCO	NS	68005	70648	362435	South Bend IN		47933
Stewartville, IN	[Vigo]	TERHA	CPRS	8707	241	373440	Terra Haute IN		47406
Stewartville, IN (1-3000-3489)	[Vigo]	TEPHA	CSX	2117078	40931	373440	Terra Haute IN		47406
Stewartville, IN (1-3000-3700)	[Dearborn]		CIND	50230	50230	374196			47022
Stewartville, IN (1-22-41-3000-3489)	[Dearborn]		CSX	59117	92117	374196	Lafayetteburg IN		47022
Stewartville, IN (41)	[Dearborn]	THYH	NS	68770	70688	374196			47022
Stewartville, IN (1-3000-3489)	[Newark]		CSX	24073	40808	363912	Malden IN		46381

EXHIBIT 2

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2004

EFFECTIVE
MARCH 15, 2004

OPSL™ 6000-Y
(Cancels OPSL 6000-X)

Includes National Rate Basis™ and Centralized Station Master Data

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- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

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Introduction to the OPSL 6000-Y

What is the OPSL?

The Official Railroad Station List, known in the rail industry as the OPSL, is a rail industry governing geographical publication, an authoritative and highly up-to-date rail station directory.

Governing publication

Since 1908, the OPSL has been a governing publication for rail geography. In fact, that's the reason the OPSL was created.

At the turn of the century, there were hundreds of rail carriers, far more than there are now. Each published its own rate publications, establishing rates for the movement of various commodities over its line. Very often, each rate publication had its own list of stations. Alternately, carriers published their own separate list of stations.

The result was predictable. To ship by rail, you had to keep a large library of rate and station publications. Rate books and station lists were confusing, inconsistent and often erroneous. Moreover, every time a station changed, the serving carrier would have to revise its rate tables.

In 1908, the first OPSL brought order and convenience to the process of listing stations. The idea behind the OPSL was to give carriers one central source in which to publish an authoritative list of their stations and facilities. Carriers using the OPSL need only refer to the OPSL in their other publications. The OPSL's list of stations would be incorporated by reference in those publications and the carriers would no longer have to revise their rate publications each time their stations changed.

In this way, the OPSL became what is called a governing publication. The OPSL's statement of rail station geography governs all rate publications that refer to the OPSL.

Today, the OPSL is the governing station publication for thousands of rate publications and also for many more thousands of contracts for the shipment of goods by rail. Participating carriers use the OPSL as their governing station publication. Shippers, transportation carriers, brokers and consultants subscribe to the OPSL to learn the latest changes in station geography.

The ICC Termination Act, which eliminated the ICC and the filing of tariffs, does not alter the OPSL's value as a governing publication. Carriers still must distribute or publish rates, and, if anything, there is now an even greater need for a central geography source for all rail rate publications.

Rail Station Directory

The OPSL is more than just a list of stations or a publication. It is the most current and authoritative statement of rail stations and their attributes available anywhere. Every day, we communicate directly (both electronically and otherwise) with carriers all over North America. We solicit and receive information on the latest adoptions, mergers, short-line track acquisitions, station changes and facilities changes.

We also work hard to display our data in an intelligible and easy-to-use format. That's why we arrange station data in both alphabetical and geographical order and why we use a system of notes to display long or highly variable data.

Making Changes to Your OPSL Listing

When rail carriers wish to change any information appearing in the OPSL, simply make changes in the Centralized Station Master (CSM) via EDI or send a completed AD101 to OPSL@Railinc.com

If you need help in making a change contact

OPSL@RAIL INC.com

or

Customer Service Center
RAILINC
7001 Weston Parkway - Suite 200
Cary, NC 27513
TEL 800-544-7245
FAX 919-651-5410

The OPSL Publication Cycle

Once a year, in March, all current OPSL stations are compiled in one volume called a "reissue". Thereafter, changes to station information are reflected in OPSL supplements. These supplements are published on the 1st and the 15th of each month. At least 24 are published before the next reissue the following March.

To find information about a particular station, first consult the reissue, and then consult all outstanding active supplements.

To prevent the task of consulting supplements from becoming too burdensome, from time to time, certain outstanding supplements are "consolidated" into one supplement. Changes in previous supplements are incorporated into the consolidated supplement and the previous supplements are canceled.

On the cover of each supplement, we list outstanding supplements. In checking a station, you only need to consult the reissue and those supplements listed on the front of the most recent supplement as being current.

For example, on the cover of an OPSL Supplement you might find something like this phrase:

Supplements 6, 12, 18, 20, 21, 22 and 23 contain all changes.

Supplements 6, 12, and 18 are consolidated supplements. Supplements 21, 22 and 23 are normal supplements.

How the OPSL Is Organized

The OPSL is organized into six principal sections, with subsections:

- ☐ Participating Carriers
- ☐ Alphabetical-Freight
- ☐ Geographical
- ☐ Junctions and Interchanges
 - IRF Junctions by Location

EXHIBIT 3

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2004

EFFECTIVE
MARCH 15, 2004

OPSL™ 6000-Y
(Cancels OPSL 6000-X)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Official revenue-capable interchange data from Industry Junction File
- ◆ Junction Rule 260 and Interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

Anthony J. Will
Issuing Officer

7001 Weston Parkway
Suite 200
Cary, NC 27513
(800) 544-7245
FAX: (919) 651-5410
E-mail: OPSL@railinc.com



ALPHABETICAL FREIGHT

STATION	COUNTY	RULE 280	RR	OPBL	FSAC	SPLC	NATIONAL RATE BASIS	SWITCH LIMIT CITY	RATE ZIP
McComb, OH	[Hancock]		NS	10425	10300	346123	McComb OH		45858
McComb, OH (1300-3495-3700)	[Hamilton]		ORY	1500	1500	350P96	Hamilton OH	Cincinnati OH	45212
McComb, OH (1300-3495-3700)	[Hamilton]		NS	7877	67480	352896	Hamilton OH	Cincinnati OH	45212
McComb, OH (1300-3495-3700)	[Scioto]		NS	6945	5710	357951	Peebles OH		45852
McComb, OH (1300-3495-3700)	[Butler]		CSXT	45302	75103	348453	Richmond IN		45013
McComb, OH (1300-3495-3700)	[Perry]		NS	77637	87888	352738	Zanesville OH		43731
McComb, OH (1300-3495-3700)	[Perry]		CSXR	1008	1008	357734			43731
McComb, OH (1300-3495-3700)	[Champaign]		ICCP	5183	4143	349553	Springfield OH		43044
McComb, OH (1300-3495-3700)	[Champaign]		NS	7244.15	66372	349553	Springfield OH		43044
McComb, OH (1300-3495-3700)	[Carroll]		NS	77647	67253	347433	Jewett OH		44551
McComb, OH (1300-3495-3700)	[Carrick]		OHIC	43.3	4310	347433			44551
McComb, OH (1300-3495-3700)	[Madison]		WE	21016	21016	345140	Spencer OH		44256
McComb, OH (1300-3495-3700)	[Paulding]		NS	10465	10333	346437	Lafayette OH		45861
McComb, OH (1300-3495-3700)	[Clinton]		CSXT	44295	71999	3584.8	Washington Court House OH		45177
McComb, OH (1300-3495-3700)	[Lake]		CSXT	47645	18375	347472	Parisville OH		44060
McComb, OH (1300-3495-3700)	[Lake]		NS	10224	11760	341472	Parisville OH		44060
McComb, OH (1300-3495-3700)	[Delaware]		CSXT	68400	86138	346721	Dunwoody OH		43066
McComb, OH (1300-3495-3700)	[Fulton]		CN	55061	55061	343411	Montpelier OH		43540
McComb, OH (1300-3495-3700)	[Fulton]	MTIAM	ORY	55061	55061	343411	Montpelier OH		43540
McComb, OH (1300-3495-3700)	[Fulton]		NS	72470	86355	343411	Montpelier OH		43540
McComb, OH (1300-3495-3700)	[Hamilton]		CSXT	43265	71844	350850	Hamilton OH		45052
McComb, OH (1300-3495-3700)	[Montgomery]		CSXT	44670	74033	354786	Dayton OH		45342
McComb, OH (1300-3495-3700)	[Montgomery]		NS	68680	71963	354786	Dayton OH		45342
McComb, OH (1300-3495-3700)	[Stark]		WE	30021	30021	344831	Carleton OH		44852
McComb, OH (1300-3495-3700)	[Gauga]		ACJR	545	545	347851			44047
McComb, OH (1300-3495-3700)	[Van Wert]		CSXT	47910	78575	346872	Lafayette OH		45043
McComb, OH (1300-3495-3700)	[Butler]	MDTWN	NS	76188	67488	359430	Dayton OH		45042
McComb, OH (1300-3495-3700)	[Butler]	MDTWN	CSXT	44805	74069	359430	Dayton OH		45042
McComb, OH (1300-3495-3700)	[Butler]	MDTWN	ORY	475	475	359430	Dayton OH		45042
McComb, OH (1300-3495-3700)	[Butler]	MDTWN	NS	68845	77960	359430	Dayton OH		45042
McComb, OH (1300-3495-3700)	[Canton]	MIDCY	CSXT	44030	71788	358482	Blanchester OH		45148
McComb, OH (1300-3495-3700)	[Canton]	MIDCY	ICCP	3447	3447	358492			45148
McComb, OH (1300-3495-3700)	[Tuscarawas]		NS	78274	67835	347873	Uhrichsville OH		44653
McComb, OH (1300-3495-3700)	[Tuscarawas]		RJCL	55	62989	347873	Uhrichsville OH		44653
McComb, OH (1300-3495-3700)	[Erie]		WF	41004	41004	342487	Sandusky OH		44846
McComb, OH (1300-3495-3700)	[Cuyahoga]		WE	30062	30062	347885	Cleveland OH		44101
McComb, OH (1300-3495-3700)	[Wood]		NS	86420	71942	343617	Toledo OH		43447
McComb, OH (1300-3495-3700)	[Harrison]		NS	65775	71881	347513	Jewett OH		43988
McComb, OH (1300-3495-3700)	[Putnam]		NS	10445	10718	346324	McComb OH		45864
McComb, OH (1300-3495-3700)	[Sandusky]		NOW	16	16	342588	Tiffin OH		44883
McComb, OH (1300-3495-3700)	[Sandusky]		NS	73005	65280	342888			43435
McComb, OH (1300-3495-3700)	[Wood]		CSXT	44800	74047	343678	McComb OH		43541
McComb, OH (1300-3495-3700)	[Stark]	MINER	NS	77646	67252	344854	Canton OH		44657
McComb, OH (1300-3495-3700)	[Stark]		WE	32016	32016	344854	Canton OH		44659
McComb, OH (1300-3495-3700)	[Stark]	MINER	NS	66010	71904	344854	Canton OH		44657
McComb, OH (1300-3495-3700)	[Stark]	MINER	OHIC	4300	4300	344854			44657
McComb, OH (1300-3495-3700)	[Stark]	MINER	WE	33003	33003	344854	Canton OH		44657
McComb, OH (1300-3495-3700)	[Jefferson]		NS	65675	71867	347236	Wheeling WV		43938
McComb, OH (1300-3495-3700)	[Jefferson]		NS	85670	71866	347236	Wheeling WV		43938
McComb, OH (1300-3495-3700)	[Jefferson]		WE	10150	10150	347236	Wheeling WV		43938
McComb, OH (1300-3495-3700)	[Auglaize]		NS	71830	68008	349295	Celina OH		45885
McComb, OH (1300-3495-3700)	[Auglaize]		RJCW	90	63289	349295	Celina OH		45885
McComb, OH (1300-3495-3700)	[Pike]		WE	30030	30030	344494	Akron OH		44260
McComb, OH (1300-3495-3700)	[Erie]		WE	41003	41003	342488			44260
McComb, OH (1300-3495-3700)	[Summit]	MOGAD	WE	30034	30034	344662	Akron OH		44260
McComb, OH (1300-3495-3700)	[Crawford]		NS	7270	5837	345884	Marion OH		43302
McComb, OH (1300-3495-3700)	[Butler]		NS	76205	87469	359446	Cincinnati OH		45054
McComb, OH (1300-3495-3700)	[Butler]		NS	55910	19	359446			45050
McComb, OH (1300-3495-3700)	[Butler]	MONRH	ORY	501	501	359446	Hamilton OH		45050
McComb, OH (1300-3495-3700)	[Butler]	MONRH	NS	68635	71969	359446	Dayton OH		45050
McComb, OH (1300-3495-3700)	[Huron]	MONVL	WE	10007	10007	345235	Sandusky OH		44847
McComb, OH (1300-3495-3700)	[Williams]	MTPEL	NS	72254	60912	343545			43543
McComb, OH (1300-3495-3700)	[Williams]	MTPEL	IN	60912	60912	343545			43543
McComb, OH (1300-3495-3700)	[Williams]	MTPEL	NS	14440	72117	343545	Montpelier OH		43543
McComb, OH (1300-3495-3700)	[Montgomery]		NS	68675	71966	354778	Dayton OH		45439
McComb, OH (1300-3495-3700)	[Montgomery]		NS	68670	71965	354778	Dayton OH		45439
McComb, OH (1300-3495-3700)	[Coshocton]	MORRU	NS	71631.95	87450	347949			43812
McComb, OH (1300-3495-3700)	[Coshocton]		NS	71297.50	87448	347949	Coshocton OH		43812
McComb, OH (1300-3495-3700)	[Coshocton]	MORRU	CSXT	89593	18635	347949			43845
McComb, OH (1300-3495-3700)	[Coshocton]	MORRU	LUOH	1180	1180	347949	Coshocton OH		43845
McComb, OH (1300-3495-3700)	[Coshocton]	MORRU	OHCR	28608	17611	347949	Coshocton OH		43845
McComb, OH (1300-3495-3700)	[Coshocton]	MORRU	WE	71100	17611	347949			43212
McComb, OH (1300-3495-3700)	[Marion]		CSXT	68470	86167	348520	Marion OH		43337

EXHIBIT 4

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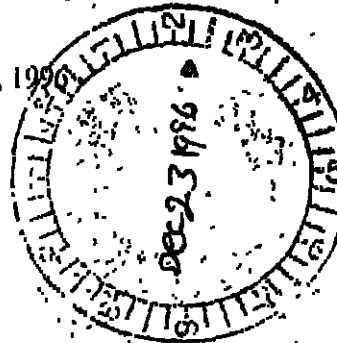
OPPENHEIMER WOLFE & DONNELLY

Two Prudential Plaza
45th Floor
150 North Stetson Avenue
Chicago, IL 60601-6710

(312) 616-1800
FAX (312) 616-5800

William C. Sippel
(312) 616-5814

December 20, 1996



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: **Docket AB 227 (Sub-No. 8X)**
Wheeling & Lake Erie Railway Company -
Abandonment Exemption -- In Huron County, Ohio

Dear Secretary Williams:

This letter is to advise the Board that pursuant to the exemption granted to Wheeling & Lake Erie Railway Company ("W&LE") in the above proceeding, W&LE today consummated the abandonment of its Milan Branch in Huron County, Ohio.

W&LE would like to thank the Board and the Board's staff for expediting its consideration of W&LE's petition. Conversion of these unused assets to cash through sale of the right-of-way to the City following abandonment will provide W&LE with a much-needed infusion of cash at a critical time when its largest customer remains shut down due to a labor strike.

Respectfully submitted,

William C. Sippel
William C. Sippel
Attorneys for
Wheeling & Lake Erie Railway Company

WCS lmd

cc: Mr. Joseph H. Detmar

ENTERED
Office of the Secretary

EC 26 1996

4 Part of
Public Record

Brussels

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EXHIBIT 5

LEXSEE 52 FR 45509

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31155]

52 FR 45509

November 30, 1987

Seminole Gulf Railway, L.P.; Exemption to Acquire and Operate -- CSX Transportation, Inc.

TEXT: Decided: November 13, 1987.

Seminole Gulf Railway, L.P. (LP), a noncarrier, has filed a notice of exemption to acquire and operate CSXT Transportation, Inc.'s lines of railroad between Arcadia (M.P. SVC 883 0) and Vanderbilt Beach (M.P. AX 990.689), and between Oneco (M.P. SW 875.0) and Venice (M.P. SW 904.425), all in the State of Florida. n1

n 1 The common control of L.P. and a nonconnecting carrier, Bay Colony Railroad Corporation, is the subject of a notice of exemption filed pursuant to 49 CFR 1180 2(d)(2) in Finance Docket No 31154 that is being served and published in the Federal Register concurrently with this notice.

Comments must be filed with the Commission and served on Applicant's representative, William P. Quinn, Esquire, Rubin, Quinn & Moss, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106, (215) 925-8300. This transaction will involve the issuance of securities by L.P. which, upon operation of the line, will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150 31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary

[FR Doc. 87-27291 Filed 11-27-87; 8:45 am]

BILLING CODE 7035-01-M

EXHIBIT 6

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURTFOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001ENTRY/FEE BOOK: 112 PAGE: 207
BOOK: 0 PAGE: 0
BOOK: 0 PAGE: 0-----
ATTORNEYS-----
PARTIES

ATTORNEYS		PARTIES
5102-70	WILLIAM B KEATON 126 W SECOND ST RUSHVILLE IN 46173 765-932-3947	PLAINTIFF(S) MORRISTOWN GRAIN CO INC
5102-70	WILLIAM B KEATON 126 W SECOND ST RUSHVILLE IN 46173 765-932-3947	HONEY CREEK RAILROAD INC
4177-49	THEODORE BLANFORD 4TH FLOOR 54 MONUMENT CIRCLE INDIANAPOLIS IN 46204 317-632-4402	DEFENDANT(S) FARMLAND INSURANCE %DAVID COLBURN 9555 DELEGATES ROW INDIANAPOLIS IN 46240
136-49	MICHAEL E SIMMONS 54 MONUMENT CIRCLE STE 400 INDIANAPOLIS IN 46204 317-632-4402	
4177-49	THEODORE BLANFORD 4TH FLOOR 54 MONUMENT CIRCLE INDIANAPOLIS IN 46204 317-632-4402	NATIONWIDE AGRIBUSINESS INSURANCE %CT CORP SYSTEM 36 S PENNSYLVANIA ST STE 700 INDIANAPOLIS IN 46204
136-49	MICHAEL E SIMMONS 54 MONUMENT CIRCLE STE 400 INDIANAPOLIS IN 46204 317-632-4402	
7879-49	ROBERT S HULETT 2400 ONE INDIANA SQUARE INDIANAPOLIS IN 46204 317-636-5401	DASEKE INSURANCE AGENCY INC %WILLIAM WILLARD 602 OAK BLVD WEST DR GREENFIELD IN 46140
3584-49	JOHN D COCHRAN JR HACKMAN McCLARNON HULETT & CRACRAFT 2400 ONE INDIANA SQUARE INDIANAPOLIS IN 46204 317-636-5401	

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE/ NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

14991-34 STEPHEN C WHEELER
11711 N PENNSYLVANIA STE 250
CARMEL IN 46032
317-575-7979

NOTICE
ELEVATORS MUTUAL

FINANCIAL INFO

PAYOR: MORRISTOWN GRAIN CO INC
COURT COSTS-STATE \$70.00
COURT COSTS-COUNTY \$30.00
DOCUMENT STORAGE FEE \$2.00
AUTOMATED RECORD KEEPING \$2.00

CHRONOLOGICAL SUMMARY OF FILINGS AND PROCEEDINGS

11/13/2001 Notice: N

RJO: N

APPEARANCE and COMPLAINT filed by William Keaton for Morristown Grain Co. Summons & Complaint issued to Marion Co Sheriff for service on Farmland Insurance and Nationwide Agribusiness Insurance Co; also issued to Hancock co Sheriff for service on Daseke Insurance Agency. jg

11/28/2001 Notice: N

RJO: N

Marion Co Sheriff returns Summons with service to Nationwide Agribusiness Insurance Co by leaving a copy on 11-26-01. jg

11/28/2001 Notice: N

RJO: N

Marion Co Sheriff returns Summons issued to Farmland Insurance with Judy Green signing for service on 11-26-01. jg

11/30/2001 Notice: N

RJO: N

Hancock Co Sheriff returns Summons with service to Daseke Insurance Agency by leaving a copy on 11-21-01 and mailing a copy. jg

11/30/2001 Notice: N

RJO: N

Alias Summons issued by certified mail to Farmland Insurance. jg

12/03/2001 Notice: N

RJO: N

APPEARANCE and MOTION FOR ENLARGEMENT OF TIME filed by Robert S. Hulett and John D. Cochran, Jr. on behalf of Defendant, Daseke Insurance Agency.

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

jh

12/04/2001 Notice: N

RJO: Y

Daseke Insurance Agency, Inc.'s Motion for Enlargement of Time sustained per Order (RJO). Time enlarged to 1-10-02. jh

12/05/2001 Notice: N

RJO: N

Certified mail receipt returned satisfied to Farmland Insurance, with Keith Albrecht signing on 12-3-01. jg

12/07/2001 Notice: N

RJO: N

APPEARANCE; MOTION FOR ENLARGEMENT OF TIME; and, JURY TRIAL REQUEST filed by Theodore J. Blanford on behalf of Defendants, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 12-6-01. jh

12/11/2001 Notice: N

RJO: Y

Order for Enlargement of Time entered (RJO). Defendants Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company shall have to 1-10-02 to file responsive pleadings. jh

01/11/2002 Notice: N

RJO: N

DEFENDANT DAESKE INSURANCE AGENCY, INC'S ANSWER AND AFFIRMATIVE DEFENSES filed by certified mail dated 1-10-02. jh

01/11/2002 Notice: N

RJO: N

ANSWER AND COUNTERCLAIM FOR DECLARATORY JUDGMENT filed by Defendants Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 1-10-02. jh

01/22/2002 Notice: N

RJO: N

ANSWER TO COUNTERCLAIM filed by Morristown Grain Company Incorporated and Honey Creek Railroad, Inc., by certified mail dated 1-18-02. jh

04/17/2002 Notice: N

RJO: N

MOTION FOR EXTENSION OF TIME filed by Plaintiffs and Counter-Defendants, Morristown Grain Company Incorporated and Honey Creek Railroad, Inc., by certified mail dated 4-16-02. jh

04/18/2002 Notice: N

RJO: N

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

Plaintiffs' Motion for Enlargement of Time sustained per Order (RJO).
Time enlarged to 5-31-02. jh

05/14/2002 Notice: N

RJO: Y

MOTION FOR PRE-TRIAL CONFERENCE filed by Plaintiffs and Counter-Defendants,
Morristown Grain Company Inc. and Honey Creek Railroad, Inc., by certified
mail dated 5-13-02.

Pre-trial conference set 7-5-02 at 2:00 p.m., per Order (RJO). jh

05/28/2002 Notice: N

RJO: N

SECOND MOTION FOR EXTENSION OF TIME filed by Plaintiffs and Counter-
Defendants, Morristown Grain Company Inc. and Honey Creek Railroad, Inc.
by certified mail dated 5-24-02. jh

05/29/2002 Notice: N

RJO: Y

Order for Enlargement of Time entered (RJO). Plaintiffs granted until
7-1-02 to submit its responses to Defendants' Request for Production of
Documents and Defendants' Interrogatories to Plaintiffs. jh

07/05/2002 Notice: N

RJO: N

DEFENDANT DAESKE INSURANCE AGENCY, INC.'S MOTION TO COMPEL; DEFENDANT'S
FIRST SET OF INTERROGATORIES TO PLAINTIFFS; and, PLAINTIFFS' RESPONSE TO
DEFENDANT'S DAESKE INSURANCE AGENCY, INC.'S FIRST SET OF INTERROGATORIES
TO PLAINTIFFS filed by Defendant, Daeske Insurance Agency. ss

07/05/2002 Notice: N

RJO: Y

Appearances: Plaintiffs, by Wm. Keaton; Defendant, Nationwide Agribusiness
by Ted Blandford; and Defendant, Daseke Insurance by John Cochran, Jr., for
Pre Trial Conference July 5, 2002. Motion to Compel and additional
Pre-Trial Conference set for Sept. 20, 2002 at 1:00 p.m., by phone unless
Motion to Compel requires otherwise. Pre-Trial Order entered. (RJO) bas

09/20/2002 Notice: A

RJO: N

Appearances: Plaintiffs, by counsel, William Keaton; Defendant,
Daseke Ins. Agency, Inc., by counsel, John Cochran, Jr. and Ellen
Morrison Townsend. Defendants, Farmland Ins. and Nationwide Agribusiness
Ins., and counsel, appear not. Pre-Trial Conference held, via telephone.
By agreement, Pre-Trial Conference continued to 2-21-03, at 2:00 p.m.,
to be held by phone. mj

09/30/2002 Notice: N

RJO: N

MOTION FOR ENLARGEMENT OF TIME filed by Defendant, Daseke Insurance

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

Agency, Inc., by certified mail dated 9-25-02. jh

10/01/2002 Notice: N

RJO: Y

Order on Motion for Enlargement of Time entered (RJO). Defendant, Daseke Insurance Agency, Inc., granted to 12-11-02 to respond to Plaintiffs' discovery requests. jh

12/10/2002 Notice: N

RJO: N

MOTION FOR ENLARGEMENT OF TIME filed by Defendant, Daseke Insurance Agency, Inc., by certified mail dated 12-9-02. jh

12/12/2002 Notice: N

RJO: Y

Order on Motion for Enlargement of Time entered (RJO). jh

01/02/2003 Notice: N

RJO: N

MOTION FOR ENLARGEMENT OF TIME filed by Defendant, Daseke Insurance Agency, Inc., by certified mail dated 12-31-02. jh

01/03/2003 Notice: N

RJO: Y

Defendant, Daseke Insurance Agency, Inc.'s Motion for Enlargement of Time sustained per Order (RJO). jh

02/21/2003 Notice: N

RJO: N

Ted Blandford reports that counsel conducted a pre-trial conference by phone this date. He reports that the case is moving along and they will contact the Court if they need anything. jh

05/22/2003 Notice: N

RJO: N

MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' INTERROGATORIES AND REQUEST FOR PRODUCTION filed by Defendants, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 5-21-03. jh

05/27/2003 Notice: N

RJO: Y

Order for Extension of Time to Respond to Plaintiff's Interrogatories and Request for Production entered (RJO). jh

01/20/2004 Notice: N

RJO: N

MOTION FOR PRE-TRIAL CONFERENCE filed by Plaintiffs. jh

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

01/21/2004 Notice: N

RJO: Y

Pre-trial conference set 4-30-04 at 3:00 p.m., per Order (RJO). jh

04/30/2004 Notice: A

RJO: N

Appearances: Plaintiff by counsel, William Keaton; Defendants, Farmland Insurance and Nationwide Agribusiness Insurance, by counsel, Theodore Blanford; Defendant, Daseke Insurance Agency, by counsel John Cochran. Pre-trial conference conducted by phone. Further pre-trial conference set 7-30-04 at 1:30 p.m. jh

07/02/2004 Notice: N

RJO: Y

MOTION TO COMPEL DISCOVERY filed by Plaintiff, by certified mail dated 7-1-04.

Order Compelling Discovery entered (RJO). jh

07/09/2004 Notice: N

RJO: N

RESPONSE TO PLAINTIFFS' MOTION TO COMPEL filed by Defendant, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company. jh

07/30/2004 Notice: A ADR

RJO: N

Appearances: Plaintiffs by counsel, William Keaton; Defendant, Farmland Insurance, by counsel Theodore Blanford; Defendant, Daseke Insurance, by counsel, John Cochran. Pre-trial conference conducted by phone. Counsel agree to complete discovery within 120 days and mediation within 120 days thereafter. jh

09/27/2004 Notice: N

RJO: N

APPEARANCE filed by Michael E. Simmons on behalf of Farmland Insurance Company and Nationwide Agribusiness Insurance Company. kk

04/07/2005 Notice: N

RJO: N

ELEVATORS MUTUAL'S OBJECTION TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS FROM A NON-PARTY AND MOTION FOR PROTECTIVE ORDER filed by certified mail dated 4-6-05. jh

04/13/2005 Notice: A

RJO: N

Defendant granted 15 days to file any response to Elevators Mutual's Motion for Protective Order or same may be summarily granted. jh

05/03/2005 Notice: N

RJO: Y

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

Order on Elevators Mutual's Objection to Defendant's Request for
Production of Documents From a Non-Party and Motion for Protective Order
entered (RJO). jh

05/25/2005 Notice: N

RJO: N

Richard Kraege to serve as mediation in this matter, per letter. jh

06/15/2005 Notice: N

RJO: N

Mediation scheduled 8-15-05, per correspondence received from mediator.
jh

09/21/2005 Notice: N

RJO: N

Mediation scheduled 10-25-05, per letter. jh

10/06/2005 Notice: N

RJO: N

Mediation rescheduled 11-15-05, per letter. jh

11/18/2005 Notice: N

RJO: N

Correspondence received from Richard Kraege, Mediator, indicating matter
was settled as to Defendant Daseke Insurance Company ONLY. All other
claims remain unsettled. jh

01/18/2006 Notice: N

RJO: Y

STIPULATION OF DISMISSAL AS TO DEFENDANT DAESKE INSURANCE AGENCY, INC.
filed by Plaintiffs and Defendant, Daeske Insurance Agency, Inc.
Order of Dismissal as to Defendant Daeske Insurance Agency, Inc. entered
(RJO). jh

01/23/2006 Notice: N

RJO: Y

MOTION FOR PRE-TRIAL CONFERENCE AND FOR TRIAL SETTING filed by Plaintiffs
and Counter-Defendants, Morristown Grain Company.
Order Setting Pre-trial Conference and Trial entered (RJO). Pre-trial
conference set 5-5-06 at 2:00 p.m.; and, jury trial set 5-22-06 at
9:00 a.m. jh

02/06/2006 Notice: N

RJO: Y

MOTION FOR CONTINUANCE OF TRIAL (5-22-06) filed by Plaintiffs.
Motion sustained and trial continued to 8-7-06 at 9:00 a.m., per Order
(RJO). jh

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

05/05/2006 Notice: N

RJO: Y

Appearances: Plaintiff by counsel, William Keaton; Defendants, Farmland Insurance and Nationwide Agribusiness Insurance, by counsel, Theodore Blanford. Pre-trial conference held. Pre-trial Order entered (RJO). Final pre-trial conference, 7-27-06 at 1:00 p.m.; and, jury trial, 8-7-06 at 9:00 a.m. jh

06/16/2006 Notice: N

RJO: N

MOTION FOR PARTIAL SUMMARY JUDGMENT; FARMLAND INSURANCE COMPANY'S BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT; and, DESIGNATION AND TENDER OF EVIDENCE filed by Defendant, Farmland Insurance Company. jh

06/16/2006 Notice: N

RJO: Y

Summary Judgment Scheduling Order entered (RJO). Hearing on Motion for Partial Summary Judgment set for 8-7-06, at 9:00 a.m. Pre-Trial Conference of 7-27-06 and Jury Trial of 8-7-06 vacated. mj

07/14/2006 Notice: N

RJO: N

MOTION FOR PRE-JUDGMENT INTEREST; MOTION TO PUBLISH AND FILE DEPOSITION OF WILLIAM E. SMITH AND FILE DISCOVERY RESPONSES OF DEFENDANTS, FARMLAND INSURANCE OF DES MOINES, IOWA AND NATIONWIDE AGRIBUSINESS INSURANCE COMPANY; DESIGNATION AND TENDER OF EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT; PLAINTIFFS' BRIEF IN RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT; AFFIDVIT OF WILLIAM B. KEATON; AFFIDAVIT OF WILLIAM E. SMITH; and, AFFIDAVIT OF LYNDA STERRETT filed by Plaintiffs. jh

07/18/2006 Notice: N

RJO: Y

Order for Publication and Filing of Deposition of William E. Smith and Discovery Responses of Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company entered (RJO). DEFENDANTS FARMLAND INSURANCE OF DES MOINES, IOWA AND NATIONWIDE AGRIBUSINESS INSURANCE COMPANY'S ANSWERS TO PLAINTIFFS' INTERROGATORIES filed. jh

08/01/2006 Notice: N

RJO: N

FARMLAND INSURANCE COMPANY'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT and MOTION TO STRIKE filed by Defendant, Farmland Insurance Company, by certified mail dated 7-31-06. jh

08/07/2006 Notice: N

RJO: N

Appearances: Plaintiff, by counsel, William Keaton; Defendant, by

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

counsel, Ted Blanford. Summary Judgment hearing called. Arguments submitted. Ruling taken under advisement. mj

08/09/2006 Notice: N

RJO: N

Transcripts and exhibits of deposition of William E. Smith filed by Ted Blanford, counsel for Defendants, Farmland Insurance and Nationwide Agribusiness Insurance. jh

08/16/2006 Notice: N

RJO: Y

Order on Partial Summary Judgment entered (RJO). mj

09/18/2006 Notice: N

RJO: N

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PRE-JUDGMENT INTEREST filed by Defendants, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 9-15-06. jh

11/03/2006 Notice: N

RJO: N

STIPULATION OF DISMISSAL filed by the parties. jh

11/06/2006 Notice: N

DISPOSED: DI RJO: Y

Order of Dismissal entered (RJO). Cause dismissed with prejudice. jh

EXHIBIT 7

STATE OF INDIANA)
) SS
COUNTY OF HENRY)

IN THE HENRY COUNTY CIRCUIT COURT

CAUSE NO. 33C01-0111-CP-358

MORRISTOWN GRAIN COMPANY,)
INCORPORATED and)
HONEY CREEK RAILROAD, INC.,)
)
Plaintiffs,)

v.)

FARMLAND INSURANCE OF DES)
MOINES, IOWA,)
NATIONWIDE AGRIBUSINESS)
INSURANCE COMPANY and)
DASEKE INSURANCE AGENCY,)
)
Defendants)

FARMLAND INSURANCE OF DES)
MOINES, IOWA and)
NATIONWIDE AGRIBUSINESS)
INSURANCE COMPANY,)
)
Counter-Claimants,)

v.)

MORRISTOWN GRAIN COMPANY,)
INCORPORATED and)
HONEY CREEK RAILROAD, INC.,)
)
Counter-Defendants)

FILED

JUN 16 2006


CLERK HENRY CIRCUIT COURT

FARMLAND INSURANCE COMPANY'S
BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes now Defendant Farmland Insurance Company ("Farmland") by counsel, and moves this Court, pursuant to Indiana Trial Rule 56, for entry of judgment in its favor and against Morristown Grain Company, Inc. ("MGC") with respect to Morristown Grain's breach of contract alleged in Count I, and bad faith causes of action alleged in Counts II and IV of its Complaint. Farmland also moves for entry of judgment in its favor and against MGC with respect to MGC's policy in that the loss on January 4, 2000 is limited to actual Cash value instead of replacement cost. Finally, MGC's request for lost business profits is limited to the time period after the January 4, 2000 loss until the time when MGC voluntarily shut down the facility. In support of its motion for partial summary judgment, Farmland states as follows.

I. FACTUAL BACKGROUND

Morristown Grain Company, Inc. is a multi-location grain buyer/storage business with several locations in mid-central Indiana. The facility at issue is in Sulphur Springs, located in Henry County, Indiana. William E. Smith is the President, Chairman of the Board and sole shareholder of MGC. Farmland Insurance Company issued a Commercial Grain renewal policy to MGC, with policy number CMG0853086. (See Policy, Exh. B). The policy was renewed with an effective from December 1, 1999 through February 21, 2000, which was in effect during the two losses which are the subject of the Complaint by MGC. (See Policy, Exh. B). Farmland sent a notice to MGC on or about December 12, 1999, to inform MGC that the policy would not be renewed following its expiration on February 21, 2000. (See Exh. E). On December 4, 1999 a grain storage bin (bin #8) at the Sulphur Springs location cracked at the lower rings and spilled a portion of the corn contents

onto the ground (See Depo. of William E. Smith, Exh. C, p. 118, lns. 10-13, 20-25; p. 122, lns. 15-17) MGC submitted a claim under the CommercialGard policy, which was denied on the basis that the occurrence was not a covered "collapse", but was instead an excluded "cracking". That claim was identified as 16165 in the Farmland system. (See Exh. D, p. 1)

On January 4, 2000, a second grain storage bin (bin #9) at the Sulphur Springs facility suffered damage by way of collapse. MGC submitted a claim, which was accepted as a covered event, under claim number 17435. However, the parties were soon in disagreement as to whether the insurance policy provided full replacement cost of the storage bin, or actual cash value less depreciation. In addition, the January 4, 2000 incident resulted in clean-up costs that exceeded the policy limits for that coverage.

On November 13, 2001, Morristown filed suit alleging breach of contract, negligence and bad faith in the claims handling of the two Sulphur Springs incidents. Farmland now seeks entry of judgment in its favor and against MGC with respect to MGC's breach of contract regarding the first loss on December 4, 1999, as an excluded loss under the policy, and summary judgment on the bad faith causes of action alleged as a result of both incidents at the Sulphur Springs facility. Additionally, Farmland is seeking a determination that the second loss of January 4, 2000, be limited to ACV, and that any lost income claimed by MGC be limited to the date that MGC decided to close the Sulphur Springs facility down voluntarily.

II. SUMMARY JUDGMENT STANDARD

A party is entitled to summary judgment if it has demonstrated the absence of a genuine issue of material fact as to a determinative issue *Jarboe v Landmark Community Newspapers of Indiana, Inc* , 644 N E 2d 118, 123 (Ind. 1994).

The movant must designate sufficient evidence to foreclose reasonable inferences that may be made in favor of the non-movant and to eliminate any factual issues *Butler v City of Peru*, 733 N.E.2d 912, 915 (Ind. 2000) Once the movant has sustained its burden of showing the absence of any material fact, the burden shifts to the non-movant to show that a genuine issue of material fact exists by establishing contrary evidence. *See Jarboe*, 644 N.E.2d at 123. A fact is “material” if it facilitates resolution of the motion *Penwell v Western & Southern Life Ins. Co* , 474 N E.2d 1042, 1044 (Ind Ct App 1985) Speculation cannot be construed as a fact for purposes of opposing summary judgment *Briggs v Finley*, 631 N E 2d 959, 964-65 (Ind. App. 1994).

If no material facts are in dispute and the terms of the contract are unambiguous or any ambiguity can be resolved without a factual determination, the issue is a matter of law appropriate for the court to resolve. *See Liberty Insurance Corp v. Ferguson Steel Co., Inc.*, 812 N E 2d 228, 230 (Ind. Ct. App. 2004); and *Cinergy Corp. v St. Paul Surplus Lines Ins. Co.*, 838 N.E.2d 1104, 1107 (Ind Ct. App. 2005). *See also Delaplane v Francis*, 636 N E.2d 169, 171 (Ind. Ct App. 1994) (construction of an insurance contract is a question of law for which summary judgment is particularly appropriate). Under Indiana law, it is proper to dispose of a bad faith claim by summary judgment where the facts warrant *See, e g , Freidline*, 774 N.E 2d at 39, 42-43; *Colley v Ind Farmers Mut. Ins Group*, 691 N.E 2d 1259, 1261 (Ind App 1998).

III. ARGUMENT

A. The December 4, 1999, Loss is Excluded from Coverage by Farmland as the Storage Bin "Cracked" and did not "Collapse" as Defined in the Policy

Farmland's CommercialGard Policy issued to MGC, with policy number CMG0853086, and was effective from December 1, 1999 through February 21, 2000, contained the following language:

I B Definitions of Limitations of Perils

1. Under coverage I A.1. Real Property and Business Personal Property and coverage I.A.2 Stock, we insure against all risk of direct physical loss except

a We will not pay for loss, damage or expense caused by, resulting from, contributed to or aggravated by directly, or indirectly.

*** * * ***

(5) Rupture or bursting

(a) Due to expansion or swelling of any buildings or structures caused by or resulting from water

(b) Of any building or structure caused by expansion or contraction of building or contents due to changes in temperature

*** * * ***

b We will not pay for loss, damage or expense caused by, resulting from, contributed to or aggravated by directly, or indirectly by the following causes, except ensuing loss by fire is covered unless otherwise excluded.

(1) Wear and tear, deterioration, rust, corrosion or erosion . . latent defect . . settling, cracking, shrinkage of sidewalks, driveways or pavements, foundations, walls, floors, roofs, or ceilings . .

* * * *

Except, ensuing loss by collapse is covered unless
otherwise excluded or caused by earthquake

VIII POLICY DEFINITIONS

THE FOLLOWING DEFINITIONS ARE MADE A PART OF THIS
POLICY

* * * *

- 10 **Collapse** means an actual falling down or caving in of
an insured building or structure or any part thereof.
Collapse does not include settling, cracking,
shrinkage, bulging, buckling, or expansion or damage
caused by earthquake (See Policy, Exh B, pp
“Property Insurance – Pages 3 and 4 of 12” and
“Policy Definitions – Page 1 of 8”).

Under Indiana law, insurance contracts are subject to the same rules of interpretation as other contracts. *USA Life One Ins Co v Nuckolls*, 682 N.E.2d 534, 537-538 (Ind 1997). When interpreting an insurance contract, courts must “ascertain and enforce the parties’ intent as manifested in the insurance contract.” *Burkett v. American Family Ins Group*, 737 N.E.2d 447, 452 (Ind. App. 2000). If the policy language is clear and unambiguous, it should be given its plain and ordinary meaning. *Meridian Mut Ins. Co v Auto-Owners Ins Co.*, 698 N.E.2d 770, 773 (Ind. 1998). Courts must also accept an interpretation of the policy language that “harmonizes the provisions rather than one which supports a conflicting version of the provisions.” *Burkett v American Family Ins Group*, 737 N.E.2d at 452 (Ind App. 2000). Courts may not rewrite an insurance contract. *American Family Mut. Ins Co v Federated Mut. Ins Co*, 775 N.E.2d 1198,

1203 (Ind. App. 2002). Insurers may limit liability in any manner that is not inconsistent with public policy, and an exclusionary clause that is unambiguous is ordinarily entitled to enforcement *Hoosier Ins Co v Audiology Found*, 745 N.E.2d 300, 309 (Ind. App. 2001); *American Family Life Assur Co v. Russell*, 700 N.E.2d 1174, 1177 (Ind. App. 1998)

Indiana law provides that insurers are free to limit liability by plainly expressing exceptions, exclusions or limitations in insurance policies and such restrictions are entitled to construction and enforcement so long as they are not inconsistent with public policy. *Allstate Ins. Co. v. Boles*, 481 N.E.2d 1096, 1098 (Ind. 1985) “Policy terms are interpreted from the perspective of an ordinary policyholder of average intelligence,” and “an ambiguity does not exist merely because the parties proffer differing interpretations of the policy language.” *Burkett v. American Family Ins Group*, 737 N.E.2d at 452 (Ind. App. 2000)

The Farmland policy in effect at the time of the December 4, 2000, loss by MGC clearly excludes from coverage any property damage which is the result of “cracking” or “bulging” of a wall. Bin #8, which spilled corn onto the ground on December 4, 2000, did so due to cracking or a separation of the steel bin at a seam. The bin did not collapse. Adjuster Rich Whaley with Farmland inspected bin #8 on December 6, 1999, two days after the loss. (See Exh. D, p. 1) Whaley determined that the bin failure was due to “cracking of the lower two ring sections of the bin.” *Id* Photographs were taken of the bin by Whaley, which show that the bin had not collapsed, but that corn had spilled due to a separation of the steel seams. *Id*

In his deposition, William E. Smith with MGC referred to the damage to the bin as a result of a "separation in the seam". (See Depo. of William E. Smith, Exh. D, p. 118, lns. 24-25). Mr. Smith also agreed that the bin had sustained a crack in it.

Q And can you see the crack in the bin? And I'm not sure which bin is cracked and where that grain came from. If you could point that out, that would be great.

Mr. Smith. I know where it is. I can show you.

* * * *

Q And that thing that is stuffed in there, is that what stopped the flow of grain?

Mr. Smith. Yes. There is a little bulging right in here and a separation in the seam right in here.

Q And when you said seam, you were pointing to a vertical line in the bin; right?

Mr. Smith. Yes. That's a bolt line.

* * * *

Q. And did you ever get anybody out there to determine what the cause of this crack was?

Mr. Smith. No. No outside parties.

(See Depo. of William E. Smith, Exh. C, p. 118, lns. 10-13, 20-25; p. 122, lns. 15-17).

As a result of the exclusion for any loss, damage or expenses caused by the "cracking" or "bulging" of a wall, the December 4, 1999, failure of bin #8, is not a covered loss under the Farmland policy.

The *Magwerks* case does not support the plaintiffs contention that this loss was due to a “collapse”, which would be covered under the policy, except for certain exclusions for collapse due to cracking or bulging. In *Magwerks*, the insurer, Monroe Guaranty, denied coverage for a roof collapse at the Magwerks facility by claiming that the collapse was a result of wear and tear and decay. *Monroe Guaranty Ins Co v Magwerks Corp*, 829 N.E 2d 969, 971 (Ind 2005). The Indiana Supreme Court affirmed the adoption of the “modern” definition of the term “collapse”. The Court determined that a majority of jurisdictions have determined that the term “collapse” is defined as a “substantial impairment of the structural integrity of the building or any part of a building.” *Id* at 972-973.

However, the policy in the *Magwerks* case did not specifically define the term “collapse”. Unlike the *Magwerks* case, the Farmland policy in the present case defines “collapse” as “an actual falling down or caving in of an insured building or structure or any part thereof. Collapse *does not include* settling, cracking, shrinkage, bulging, buckling, or expansion or damage caused by earthquake ” (Emphasis added, See Policy, Exh B, p. “Policy Definitions – Page 1 of 8”). Indiana law permits insurers to limit their liability through the use of exclusionary clauses. *Hoosier Ins Co v Audiology Found.*, 745 N.E.2d at 309 (Ind. App. 2001) , *American Family Life Assur. Co v. Russell*, 700 N.E.2d at 1177 (Ind App. 1998). Courts may not extend insurance coverage beyond that provided by the language of the insurance contract. See, e.g., *Gallant Ins Co. v Oswald*, 762 N E 2d 1254, 1262 (Ind. App. 2002).

Therefore, the *Magwerks* case does not create coverage for MGC's December 4, 1999 incident, as the definition of the term collapse is defined in the Farmland policy, and clearly excludes from the definition of collapse any cracking or bulging. The damage to bin #8 on this occasion was clearly limited to a crack or bulge in the seam of the grain bin. For these reasons, Farmland is entitled to an entry of judgment that MGC is not covered for the loss of December 4, 1999.

B. Farmland is Entitled to Summary Judgment with Respect to MGC's Claim for Bad Faith for the December 4, 1999 Loss, as Farmland had a Reasonable Basis to Deny the Claim

Bad faith is an intentional tort. Indiana courts have found that, for an insurer to breach its duty to act in good faith, the policyholder must show by clear and convincing evidence that the insurer acted with a state of mind reflecting dishonest purpose, moral obliquity, furtive design or ill will. *See, Monroc Guaranty Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005); *Johnston v. State Farm Mutual Automobile Ins. Co.*, 667 N.E.2d 802, 805 (Ind. Ct. App. 1996); *Indiana Insurance Co. v. Plummer Power & Mower Tool Rental, Inc.*, 590 N.E.2d 1085, 1093 (Ind. Ct. App. 1992). "Poor judgment or negligence do not amount to bad faith, the additional element of conscious wrongdoing must be present." *Colley*, 691 N.E.2d at 1261; *see also, Erie Ins. v. Hickman*, 622 N.E.2d 515, 518 (Ind. 1993) (holding that lack of a diligent investigation alone is insufficient to support a claim of bad faith).

The clear and convincing standard of proof is stricter than the preponderance of the evidence standard. As noted by the Indiana Supreme Court, the clear and convincing standard is frequently imposed in civil cases where the wisdom of experience has demonstrated the need for greater certainty, and where the higher standard is required to sustain claims which have serious social

consequences or harsh and far reaching effects. *Travelers Indem Co v. Armstrong*, 442 N.E.2d 349, 360-61 (Ind. 1982). Under Indiana law, an insurer is entitled to a rebuttable presumption that it acted in good faith in the handling of a claim *Burleson v. Illinois Farmers Ins Co*, 725 F Supp. 1489, 1494 (S.D. Ind. 1989), *Carroll v Statesman Ins. Co*, 493 N.E.2d 1289, 1293 (Ind. Ct. App. 1986) *aff'd in part* 509 N.E.2d 825, 827 (Ind. 1987). To defeat summary judgment, MGC must proffer evidence sufficient for a trier of fact to find that bad faith was proven by clear and convincing evidence. *See, Erie Ins Co*, 622 N.E.2d at 521 (discussing standard). MGC cannot meet this burden.

Farmland clearly had a reasonable basis to deny the December 4, 1999 claim as a result of the inspection by adjuster Rich Whaley and the exclusionary language contained in the policy. The evidence establishes that there is no genuine issue of fact concerning MGC's bad faith claim for the December 4, 1999 loss, and that Farmland is entitled to judgment against MGC as a matter of law with respect to Count II of MGC's Complaint

C. MGC's Claim for the January 4, 2000 Loss is Limited to Actual Cash Value and Not Replacement Cost

MGC's claim for damages as a result of the January 4, 2000, bin collapse are limited to that of actual cash value and not replacement costs pursuant to the terms of the policy. The policy provides under Section I.A.d that:

LOSS SETTLEMENT CLAUSE. We will settle losses on actual cash value basis as defined in Section I.C.1.

(See Exh. B, p "Property Insurance – Page 2 of 12"). Actual cash value is defined as the replacement cost of the property damaged or destroyed at the time of loss, less depreciation. (See Exh B, p "Policy Definitions – Page 1 of 8") The policy did contain a replacement cost endorsement, endorsement CMGB231 1195 for specified buildings listed on the schedule. This provision would allow MGC to ignore depreciation when determining what the replacement cost would be for bin #9. However bin #9 which collapsed at the Sulfur Springs location on January 4, 2000 was not a covered building pursuant to the terms and conditions of the replacement cost endorsement, and therefore cost of replacement without deduction for depreciation was not available to MGC.

The replacement cost endorsement lists several items under Location No. 3, which is the Sulphur Springs facility (See Exh B, p. 2, "Replacement Cost Coverage Endorsement") The only bins listed on the endorsement are "OH BINS" which applies to Overhead Bins at the Sulphur Springs facility, and not to bin #9. The map shows that the overhead bins are listed as item #15, and are located in a different location than that of the steel bins, which are item #11 on the map for this facility Mr. Smith also agreed that the policy was an actual cash value policy with respect to the January 4, 2000 loss:

Q. So as to whether or not -- let me rephrase this. Do you agree now as we sit here that the policy for January 4th of 2000 was an actual cash value policy as opposed to replacement cost?

Mr. Smith. That's the way it's written

(See Depo. of William E Smith, Exh. C, p 236, lns 7-11)

As a result, bin #9 is limited to the actual cash value which is defined in the policy as the replacement cost minus depreciation. MGC is not entitled to reimbursement for replacement cost only, and must account for depreciation. Farmland is entitled to a determination by this Court that the value of bin #9 is limited to actual cash value as defined in the policy.

D. Farmland Is Entitled to Judgment as a Matter of Law with Respect to the Second Bad Faith Claim as Farmland Complied with Three Different Indiana Statutes in Non-Renewing MGC's Policy and Also Had Attempted to Settle the January 4, 2000 loss with MGC.

1 The Farmland policy was limited to a policy period of 12-1-99 to 2-21-00 when it was purchased

Farmland is also entitled to judgment as a matter of law with respect to MGC's claim for bad faith regarding the alleged cancellation of the policy and failure to promptly settle this claim, specifically Count IV of the Complaint. Farmland decided not to renew the policy due to its unavailability to obtain reinsurance for the MGC risk. Farmland complied with three Indiana statutes, IC 27-1-31-2, IC 27-1-31-2.5, and IC 27-1-31-3 regarding the cancellation or nonrenewal of the MGC policy. The compliance with any *one* of the three statutes would eliminate MGC's bad faith claim. Also, Farmland and MGC disagreed over the value of the bin that collapsed and MGC's lost income. The parties could not reach an agreement as to specific numbers to settle this claim. As a result, MGC cannot establish its burden and demonstrate by clear and convincing evidence that Farmland acted in bad faith in cancelling the policy and failed to promptly settle the claim.

Indiana Code 27-1-31-2, "Grounds for cancellation; notice of cancellation" provides that.

- (a) An insurer may not cancel a policy of insurance that the insurer has written that has been in effect more than ninety (90) days unless:
 - (1) the insured under the policy has failed to pay the premium;
 - (2) there is a substantial change in the scale of risk covered by the policy,
 - (3) the insured has perpetrated a fraud or material misrepresentation upon the insurer;

- (4) the insured has failed to comply with reasonable safety recommendations; or
- (5) reinsurance of the risk associated with the policy has been cancelled.

(b) An insurer shall provide a written notice of cancellation to a person insured under a policy issued by the insurer at least:

- (1) forty-five (45) days before cancelling the policy for any reason set forth in subsection (a)(2), (a)(4), or (a)(5),
- (2) twenty (20) days before cancelling the policy for the reason set forth in subsection (a)(3); or
- (3) ten (10) days before cancelling the policy for the reason set forth in subsection (a)(1).

In the present matter, Farmland sent a "Notice of Cancellation or Nonrenewal" to MGC on December 13, 1999 (See Exh. E). The notice stated that the policy, CMG853086, would expire on February 21, 2000 at 12:01 A M *Id* The reason for the cancellation was listed as "Loss of Reinsurance on Risk". *Id*. This cancellation notice was mailed out 70 days prior to the expiration of the policy. The cancellation notice was a formality because the policy that was purchased by MCG had a policy term that would expire on February 21, 2000 When the policy was purchased the term listed on the declaration page shows the policy period from "12/01/99 -- 02/21/00" (See Exh F) Mr. Smith agreed that the policy was limited to this time period when he purchased it:

Q. If, in fact, this policy was basically a three-month policy written from 12-01-99 to 2-21-2000, this declaration sheet, if it came from the policy, would have informed you, had you read it, that the policy was a three-month policy, correct?

Mr. Smith Yes.

(See Depo of William E. Smith, Exh C, p. 348, lns. 6-12). Farmland sent out the Notice of Cancellation as a safeguard to comply with Indiana law.

Indiana Code 27-1-31-2, only applies to policies that have been in effect for more than ninety days. Here, the Farmland policy had only been in effect for 13 days (December 1 to December 13) when the notice of cancellation was sent. Although this section of the code is inapplicable, Farmland nonetheless complied with IC 27-1-31-2(b)(1) by sending out notice of the cancellation well ahead of the 45 days required before the policy expires.

Indiana Code 27-1-31-2.5, "Notice of cancellation" states that:

An insurer may cancel a policy of insurance that the insurer has written that has been in effect ninety (90) days or less by providing a written notice of cancellation to a person insured under the policy at least

- (1) ten (10) days before cancelling if an insured has failed to pay a premium,
- (2) twenty (20) days before cancelling if the insured has perpetrated a fraud or material misrepresentation upon the insurer; or
- (3) thirty (30) days before cancelling for any other reason.

This section of the code does apply to the present situation as the policy had been in effect less than ninety days. Nonetheless, Farmland complied with this section of the law by sending out the notice well ahead of the thirty days required before cancellation for "any other reason."

Finally, IC 27-1-31-3, "Notice of nonrenewal" provides that

(a) If an insurer refuses to renew a policy of insurance written by the insurer, the insurer shall provide written notice of nonrenewal to the insured:

- (1) at least forty-five (45) days before the expiration date of the policy, if the coverage provided is for one (1) year, or less, or
- (2) at least forty-five (45) days before the anniversary date of the policy, if the coverage provided is for more than one (1) year

(b) A notice of nonrenewal is not required if

- (1) the insured is transferred from an insurer to an affiliate of the insurer for future coverage as a result of a merger, an acquisition, or a company restructuring;
- (2) the transfer results in the same or broader coverage; and
- (3) the insured approves the transfer.

Should MGC interpret the notice as a nonrenewal notice instead of a cancellation notice, Farmland complied with the statute regarding notices of nonrenewal as well. IC 27-1-31-3(a)(1) states that the nonrenewal notice must be sent at least 45 days before the policy expires, if the coverage is for one year or less. Farmland sent the notice to MGC, 70 days prior to the expiration of the policy, thus complying with this section of the code. As a result of Farmland's compliance with all three of these statutes regarding cancellation and nonrenewal, summary judgment with respect to MGC's claim that Farmland "wrongfully cancelled" its policy is appropriate.

2. *Farmland did not act in bad faith in negotiating the January 4, 2000 loss*

Farmland is also entitled to summary judgment with respect to MGC's bad faith claim that it "failed to promptly settle" the January 4, 2000 claim. The two parties had discussions over the value of bin #9 and MGC's lost income, but could not reach an agreement on the figures. These discussions were mentioned in the deposition of William E. Smith:

- Q. You don't remember being offered any settlement money by either Rich Whaley or Andrew Watt during the course of this?
- Mr. Smith. I can't remember any numbers right off.
- Q. As opposed to just numbers. Did you have discussions with them on resolving the case before you filed your lawsuit?
- Mr. Smith. I think so. Had to have happened or we wouldn't be where we're at today.
- Q. There was a disagreement on what those values should be, then?
- Mr. Smith. That would be right.
- Q. You filed a lawsuit as a result of a disagreement of those values and over the coverage?
- Mr. Smith. That would be right.

* * * *

Q. Well, this is my letter to you, January 13th, 2004. Now there have been previous offers made. I don't have those right in front of me, but at least in January of 2004 you were offered \$61,162 in settlement for the bin and that included the foundation. Why is that bid or why is that offer, in your opinion, not enough?

Mr. Smith I think because they discounted the foundation as not taking much to put it in, and it does take a lot to put it in

* * * *

Q Okay You were offered \$39,859 for the conveying equipment. I'm sorry, you were offered \$27,901 for the conveyor equipment. That was based upon a 30 percent depreciation of conveyor equipment. What's inappropriate about that offer?

Mr. Smith. Whenever I had those conveyors put in there, I paid, like, \$50,000 worth of labor and crane to put them in there. See, that doesn't get them up in the air

* * * *

Q Farmland offered you \$53,367 for the cost of moving the grain to the other company elevators, and that included \$36,959 that were alleged that the company costs -- it says the farmer's cost is 16,408. And I believe you hired some drivers to haul the grain?

Mr. Smith. Yes.

* * * *

Q. They offered another -- first off, what is inadequate about the offer of \$53,367 for the cost of moving the grain in the farmer's cost?

* * * *

Mr. Smith I think that's about what we determined it to be, wasn't it?

* * * *

Q. Then they offer \$25,000 in business income loss for a reasonable period of time after the bin was damaged when you couldn't use the facilities to the fullest extent.

Mr. Smith. I think that was a problem.

Q Why is that a problem?

Mr. Smith Because we suffered more loss than that

(See Depo of William E. Smith, Exh C, pp 247, 238, 239, 241, 245, 246).

It is evident from Mr Smith's testimony that Farmland had offered to settle the January 4, 2000 loss, but the two parties could not agree on the valuation of the various items within the claim. Adding to the disagreement was whether or not the bin was subject to actual cash value or replacement cost. The disagreement on the valuations does not rise to the level of bad faith by Farmland. MGC must proffer evidence sufficient for a trier of fact to find that bad faith was proven by clear and convincing evidence. *See, Erie Ins Co*, 622 N.E.2d at 521 (discussing standard). MGC cannot meet this burden with respect to the January 4, 2000 loss.

E. MGC's Claim for Lost Business Income is Limited to when MGC Voluntarily Decided to Shut the Sulphur Springs Facility Down

MGC is claiming lost income as a result of the January 4, 2000 bin collapse. MGC is further claiming that it had to shut down the Sulphur Springs facility due to MGC's failure to procure other insurance for the facility. Now, MGC wants Farmland to pay for its lost income from this facility as a result of the closure, even though MGC voluntarily shut down the facility due to its inability to find another insurer after the Farmland policy ended.

The Farmland policy states that it will pay lost income during the "period of restoration".

VI BUSINESS INCOME INSURANCE

A Property Covered

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of **your operations** during the **period of restoration**. The suspension must be caused by direct physical loss or damage to **real property, business personal property or stock** covered under this policy.

(See Policy, Exh. B, p. "Business Income Insurance – Page 1 of 8"). The policy defines the "period of restoration" as the period of time

- a Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described **premises**; and
- b Ends on the date when the **property** at the described **premises** should be repaired, rebuilt or replaced with reasonable speed and similar quality . .

(See Policy, Exh. B, p. "Policy Definitions – Page 5 of 8")

In his deposition, Mr. Smith admitted that he had difficulty in finding another company to insure the Sulphur Springs facility when the Farmland policy ended on February 21, 2000.

Q. The fact of the matter is you couldn't get insurance and that's why you had to shut down Sulphur Springs?

Mr. Smith Right

(See Depo. of William E. Smith, Exh. C, p. 328, lns. 5-8) Smith testified that he shut down the Sulphur Springs facility sometime in April of 2000, following the collapse of bin #9:

Q After the collapse, did you do any business to take in corn from anybody at Sulphur Springs?

Mr. Smith No.

Q After the cleanup, did you continue to have employees there until you finally determined that you were not going to be able to reopen Sulphur Springs?

Mr. Smith. Yes, I did.

Q I think we established Jim Cain was there. Were there any other employees there?

Mr. Smith. Yes, there were three others

Q So, in fact, we had wages for four people from the time the cleanup was over until you determined you couldn't reopen. Do you know when the cleanup ended?

Mr. Smith. It was sometime in April.

Q. And when did you let these employees go?

Mr. Smith. I think it was around that time

Q. Okay. Well --

Mr. Smith. Or a little bit after.

(See Depo. of William E. Smith, Exh. C, pp 321-322)

As a result, Smith cannot claim lost business income under the policy when he is the one who voluntarily shut the Sulphur Springs facility down in April of 2000. The policy limits lost business income to "a date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed . . ." Smith cannot simply close his doors and seek reimbursement from Farmland for lost income when he has decided not to rebuild and reopen the facility. Therefore, Farmland's duty under the policy to reimburse MGC for lost income from the Sulphur Springs facility ended in April of 2000, when the facility was shut down

IV. CONCLUSION

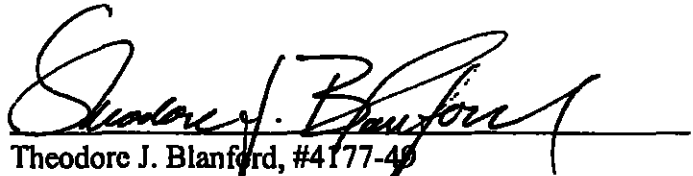
MGC is not entitled to coverage for the December 4, 1999 loss from bin #8 as the evidence shows that the bin "cracked" and did not "collapse" as defined in the policy. Therefore this loss is excluded by the Farmland policy. This coverage issue with bin #8 clearly gave Farmland a reasonable basis to deny the claim, which eliminates MGC's Count II for bad faith as a result of the December 4, 1999 loss.

Additionally, the policy provides for actual cash value and not replacement value with respect to the January 4, 2000 loss. Farmland and MGC disagreed over how bin #9 should be valued. This disagreement between the two parties resulted in Farmland's offer to settle the claim being rejected by MGC. Secondly, Farmland did not cancel the policy in violation of any statute. The policy only had an effective period of three months. Nonetheless, Farmland complied with the statutes regarding notification of nonrenewal of the policy. Clearly, these actions do not rise to the level of bad faith as asserted by MGC, and Farmland is entitled to summary judgment with respect to Count IV of the Complaint.

Finally, MGC's lost business income claim is limited to the January 4, 2000 collapse to the date that it voluntarily shut down the Sulphur Springs facility in April of 2000. The policy allows for a reasonable time to rebuild the facility, during which time lost income will be reimbursed. However, the voluntary abandonment of rebuilding the facility would cut off MGC's claim for lost income. Therefore Farmland should be required to reimburse MGC for lost income from January 4, 2000 until April of 2000.

Accordingly, this Court should grant Farmland's motion for partial summary judgment with respect to Counts I, II, and IV, and enter a judgment as matter of law that the January 4, 2000 loss is limited to actual cash value as defined in the policy and that MGC's claim for lost business income ceased in April of 2000.

Respectfully submitted,



Theodore J. Blanford, #4177-49

Michael E. Simmons, #136-49

HUME SMITH GEDDES GREEN & SIMMONS, LLP

54 Monument Circle, 4th Floor

Indianapolis, IN 46204-2996

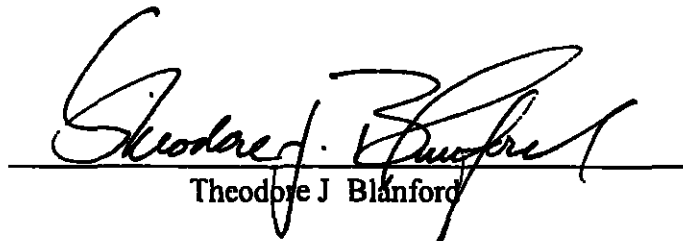
Telephone (317) 632-4402

Attorneys for Farmland Insurance Company and
Nationwide Agribusiness Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded by U.S. Mail, postage prepaid,
to the following attorney on the 13 day of June, 2006

William B. Keaton
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173
Attorney for Plaintiffs



Theodore J. Blanford

EXHIBIT 8

STATE OF INDIANA)
)
)
COUNTY OF HENRY)
)
)
IN THE HENRY CIRCUIT COURT)
CAUSE NO 33COI-0111-CP-358)

FILED

AUG 1 6 2006

[Signature]
CLERK HENRY CIRCUIT COURT

FILE

MORRISTOWN GRAIN COMPANY,
INCORPORATED and
HONEY CREEK RAILROAD, INC
Plaintiffs,

FARMLAND INSURANCE OF DES
MOINES, IOWA,
NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,
Defendants.

FARMLAND INSURANCE OF DES
MOINES, IOWA and
NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,
Counter-Claimants,

MORRISTOWN GRAIN COMPANY,
INCORPORATED and
HONEY CREEK RAILROAD, INC ,
Counter-Defendants

ORDER ON PARTIAL SUMMARY JUDGMENT

On August 7, 2006, Defendant/Counter-claimant Farmland Insurance of Des Moines, Iowa appeared by counsel, Theodore Blanford, and Plaintiffs/Counter-defendants Morristown Grain Company, Inc appeared by counsel, William B. Keaton, on a Motion for Partial Summary Judgment filed by Defendant/Counter-claimant (hereinafter Farmland). The Court heard argument and reviewed evidence and FINDS and ORDERS the following

Summary Judgment is appropriate when there are no genuine issues of material fact, and the issue can be decided as a matter of law. The purpose of summary judgment pursuant to Trial Rule 56 is to terminate litigation, *Eller v. St. Joseph Regional Medical Center South Bend Campus, Inc.*, 789 N.E.2d 497, 500 (Ind App. 2003). The moving party bears the burden of showing entitlement to summary judgment as a matter of law and once the movant has met that burden, the non-movant

CONCLUSIONS OF LAW

Farmland seeks partial summary judgment with respect to 1) Breach of Contract regarding the December 4, 1999 loss; 2) the bad faith claims; 3) determination that the January 4, 2000 loss be limited to actual cash value rather than replacement value; and 4) that any lost income claimed by Morrisstown be limited to the date Morrisstown voluntarily closed the Sulphur Springs facility. Morrisstown filed suit alleging breach of contract, negligence, damages, wrongful cancellation and bad faith.

Plaintiff/counter-claimant (hereinafter Morrisstown) operated a multi-location grain buyer/storage business with several locations in mid-central Indiana. Farmland issued a commercial insurance policy to Morrisstown with a policy period of December 1, 1999 to February 21, 2000 [Plaintiff's Exhibit 1 to William Smith deposition] On or about December 4, 1999 Morrisstown suffered a loss at their facility. Morrisstown submitted a claim which was denied by Farmland who alleged that the loss was not covered. On January 4, 2000, Morrisstown suffered a second loss at their Sulphur Springs facility. Morrisstown submitted a claim which Farmland accepted as a covered loss, but a dispute arose over the settlement of the claim. On November 13, 2001, Morrisstown filed suit alleging breach of contract, negligence, damages, wrongful cancellation and bad faith.

FINDINGS OF FACT

Under Indiana law, insurance contracts are subject to the same rules of interpretation as other contracts. A contract is generally interpreted by examining the plain ordinary meaning of the terms, *Zollman v. Geneva Leasing Associates, Inc.*, 780 N.E. 2d 387, 393 (Ind App 2002). Only when a reasonable person could find the terms susceptible to more than one meaning, may the Court consider extrinsic evidence in the interpretation of the written instrument, *Id.* at 292. There is no evidence that the written contract terms were confusing or in dispute. Although all reasonable inferences are construed in favor of the non-movant, the non-movant may not rest upon "mere allegations or denials of his pleading, but his response, by affidavits or otherwise...must set forth specific facts showing there is a genuine issue for trial." Trial Rule 56, *Cowe v. Forum Group, Inc.*, 575 N.E.2d 630, 633 (Ind 1991)

MOTION TO STRIKE

Farmland's Motion to Strike Paragraphs 20, 21, 22, 23 and 29 of the Affidavit of William E. Smith is GRANTED as containing either conclusory statements or hearsay statements. Farmland's Motion to Strike Paragraphs 3, 4, 16 and 27 of the Affidavit of William E. Smith is DENIED and said statements are deemed proper for consideration in these proceedings.

COUNT I: BREACH OF CONTRACT

The parties dispute the nature of the December 4, 1999 loss. Farmland claims that the loss is a result of "cracking" or "bulging" which are not covered losses. Morristown claims that the loss is a covered "collapse". The Court finds that this distinction regarding the precise nature of the damage is a genuine issue of material fact which precludes the entry of summary judgment. The motion for partial summary judgment as to Count I is **DENIED**.

The parties dispute the extent of coverage for lost business profits following the January 4, 2000 loss. Morristown shut down the Sulphur Springs facility in April of 2000. Farmland argues that this is a "voluntary" shutdown which should serve to limit coverage. Morristown alleges that the insurance policy coverage allows for a "reasonable" time to repair the facility under the section for the period of restoration. The amount of lost business profits constitutes a factual dispute which precludes the entry of summary judgment. The court finds that a genuine issue of material fact exists

LOST BUSINESS PROFIT LIMIT

purposes in this litigation

Morristown has agreed that the coverage for the January 4, 2000 loss is limited to the actual cash value instead of replacement cost as the same shall be deemed as stipulated for all further

ACTUAL CASH VALUE

Count IV.

Morristown was covered by a policy of insurance with coverage from December 1, 1999 to February 21, 2000. This policy lapsed on February 21, 2000 and was not renewed. William Smith acknowledged these policy terms in his deposition [William Smith deposition page 328, line 22 *et seq. and Plaintiff's Exhibits 1 and 2*]. Farmland has established that the Indiana insurance statutes have been complied with and there is no genuine issue of material fact which would establish a claim for bad faith on this issue. The motion for partial summary judgment shall be **GRANTED** as to

COUNT IV: BAD FAITH AND WRONGFUL CANCELLATION

December 4, 1999 loss and said Count II is hereby **DISMISSED**.

Morristown has agreed to dismiss Count II of the Complaint regarding bad faith on the

COUNT II: BAD FAITH

regarding this coverage and the motion for partial summary judgment on this issue is **DENIED**

CONCLUSION

1 The Motion for Partial Summary Judgment filed by Farmland is hereby **GRANTED** as to Count IV

2 The Plaintiff has dismissed Count II

3 The January 4, 2000 covered loss is limited to actual cash value rather than replacement value

4 There are genuine issues of material fact which preclude the entry of partial summary judgment as to Count I and the issue of the amount of lost business profits and the

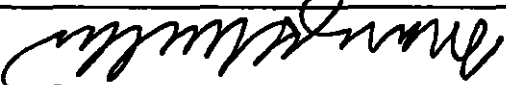
Motion for Partial Summary Judgment filed by Farmland on these issues is **DENIED**

5 The matter will be set for pre-trial conference and trial upon precept by the parties after all efforts at mediation have been exhausted.

6. Farmland is given 30 days to file a response to Morristown's request for prejudgment interest

ALL OF WHICH IS CONSIDERED, ORDERED ADJUDGED AND DECREED THIS 16th

DAY OF AUGUST, 2006.


HON. MARY G. WILLIS
JUDGE, HENRY CIRCUIT COURT

DISTRIBUTION:

William B. Keaton, Counsel for Plaintiff/Counter-defendant Morristown Grain Co., Inc.
Theodore Blanford, Counsel for Defendant/Counter-claimant Farmland Insurance

EXHIBIT 9

LAW OFFICES
KEATON AND KEATON, P.C.
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WALTER B. KEATON (1912-1980)
WILLIAM B. KEATON

TELEPHONE (765) 932-3947
FAX (765) 938-2803

December 13, 2005

Mr. John H. Brooke
Brooke & Mawhair, P.C.
P.O. Box 1071
Muncie, Indiana 47308-1071

Re Honey Creek Railroad, Inc. v
Gary L. Roberts, et al
Henry Circuit Court
No. 33CO1-0506-CT-0019

Dear Mr. Brooke:

I have spoken with Richard R. Wilson concerning your contentions that Honey Creek has some duty or obligation to remove the railroad bed and clean the property or would have some other unspecified duty relating to the possible abandonment of the railroad. Mr. Wilson has advised me that there is no such duty, and further, that in over thirty years of railroad law practice, he has never seen an order which would require any such action on the part of the railroad.

It is obvious that the outcome of this matter will hinge upon the legal question of whether or not there has been an abandonment. The legal question is within the exclusive jurisdiction of the federal government through the Surface Transportation Board. I had previously asked you whether or not you would agree to an order of referral to the Surface Transportation Board to have this legal question answered. Please advise me whether or not you will agree to the order of referral to the Surface Transportation Board.

I have enclosed a copy of my follow-up letter to Judge Toney asking him to set this petition for hearing. I am hopeful a hearing will not be required.

Also enclosed please find the Answer of Honey Creek Railroad, Inc. to each of the Counter-Complaints which you filed and my Affirmative Defenses.

I will await hearing from you regarding this matter.

Very truly yours,



William B. Keaton

WBK:lm

cc Mr. William L. Smith
Richard R. Wilson, Esq.

Encl

THIS LETTER IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY AND IS NOT INTENDED FOR THE BENEFIT OR RELIANCE UPON BY ANY OTHER PERSON OR ENTITY

EXHIBIT 10



CourierTimes

www.thecouriertimes.com

Thursday, May 10, 2007

Board turns deaf ear to opponents 2 ethanol plants OK'd

Thursday, May 10, 2007



A group of neighbors who live near the proposed Blue River Ethanol site stood firm in their opposition of the plant. They attended Wednesday's meeting wearing stickers which read, "No! Blue River Ethanol, LLC" (C-T photo John Guglielmi)

After more than three hours of deliberation, the Henry County Commissioners unanimously voted Wednesday in favor of two proposed ethanol plants

Despite a petition of more than 640 signatures and nearly 80 people protesting at Wednesday's meeting, commissioners first approved a movement to adopt the proposal presented by Julian Gehman for Blue River Ethanol. Gehman, a Washington, D.C. attorney, is founder of the company planning to transform 189 acres of northern Henry County farm land into an industrial site for ethanol production

Donning stickers that read "No! Blue River Ethanol, LLC," opponents of the plant initially filed into the old Henry Circuit Courtroom at 9 a.m. Wednesday morning. Commissioner Phil Estridge announced that the meeting would take place back in the commissioner's office regardless of the

ETHANOL PLANTS At a glance

Henry County Commissioners approved zoning for two ethanol plants on Wednesday.

Twin Creek Ethanol

Production of 110 million gallons per year

\$228 million investment

40-50 people employed

Blue River Ethanol

Production of 100 million gallons per year

\$180 million investment

50-60 people employed

"We are aware of the issues here," Estridge stated, "so we're not going to listen to everybody, particularly if you're repeating what we already know."

With 17 letters in protest of the Blue River Ethanol plant sitting on his desk, Estridge said commissioners already were well aware of the concerns

Attorney Drew Price represented a group of neighbors who live near the proposed Blue River Ethanol site. With an aerial map of the land, Price pleaded for the commissioners to consider the proximity of homes in the area

"There are more than 289 homes within one square mile from where this plant would be," he stated. One of those homes, owned by Kathy Miller, will be surrounded on three sides by the plant and is expected to decrease by 35 percent in value, according to an appraiser's report from Rhodes Realty

Price also pointed out that a noise study had not been presented and light pollution would be a nuisance

Resident Lonnie Nation, who lives within a mile of the site, told commissioners he did not feel there was sufficient protection in case of an explosive blast, though Gehman and company offered to put up a four foot berm around the east side

But the commissioners, along with Mount Summit town officials, said the long-term economic force will greatly outweigh the potential downsides

"The economic impact is probably going to be the greatest to ever hit this county," said Prairie Township Trustee Mike Burch

Republican mayoral candidate Jim Small was also enthusiastic. "This is really going to be a wonderful thing for

the community," he said

Commissioner Larry Hale moved to adopt Blue River Ethanol's proposal with the following conditions

Blue River Ethanol shall provide a \$5 million post-closure bond to dismantle and return the land to its pre-construction condition

Blue River Ethanol shall build a 6-foot berm along the entire length of the project on County Road 50E and shielding the properties abutting the south and east perimeters of the property with two rows of evergreen trees staggered on the top

Blue River Ethanol shall have major construction in place, consisting at a minimum of substantial excavation and poured foundations, within 12 months of this date, which time period will be stayed for any period of time during which there is pending any statutory remonstrance activity and litigation

Candidate Pushes Project

Just one day after New Castle's primary election, Small told commissioners he came to the meeting "wearing two hats "

Small was assigned by the New Castle-Henry County Economic Development Corp to work on bringing ethanol to Henry County He emphasized that he wanted both plants. However, he had concerns about Twin Creek Ethanol

"I may be mayor of New Castle and I don't want trucks running through our town," Small told commissioners

In a truck traffic analysis, Twin Creek Ethanol would supposedly be passing 110 trucks of corn per day through the area, compared to 24 trucks per day at Blue River Ethanol

Mayor Tom Nipp had also expressed concerns with excessive truck traffic in the downtown area

Nipp, former New Castle fire chief, said in his opinion, the worry of an explosion was unnecessary, though

"The idea of a blast with fallout and everything is really exaggerated," he said

Some of the neighbors who previously opposed Twin Creek Ethanol changed their tunes at Wednesday's meeting After speaking with representatives of Twin Creek Ethanol, landowners in the area felt now that it might not be a bad thing after all

In fact, the commissioners didn't receive one letter complaining about the Twin Creek proposal

Jim Overmyer, who admitted to being violently opposed to the plant at first, said Twin Creek Ethanol is now generously meeting his requests

"We've signed a legal document and if they back out, I'll just sue 'em," he said

Commissioner Bill Cronk moved to adopt Twin Creek Ethanol's proposal upon the following conditions

Twin Creek Ethanol shall provide a \$5 million post-closure bond to dismantle and return the land to its pre-construction condition if the plant ceases production for a period of 24 consecutive months

Twin Creek Ethanol shall have major construction in place, consisting of a minimum of substantial excavation and poured foundations, within 12 months of Wednesday's date, which time period will be stayed for any period of time during which there is pending any statutory remonstrance activity and litigation

Central Avenue from Wilbur Wright Road to Road 600E, a one-mile stretch, and Road 600E from Brown Road to State Road 38, a two-mile stretch, will be kept in passable condition Twin Creek will reconstruct these roads to new road specifications

Related Links